Chapter 4

Remarks or Arguments

4.1 Certain dependent claims

I may not have understood the objection on a dependent claim from another class of statutory matter. I include the following as part of the dialogue.

`http://www.uspto.gov/web/offices/pac/mpep/old/E7R1_600.pdf`

Page 600-68

> The fact that the independent and dependent claims are in different statutory classes does not, in itself, render the latter improper. Thus, if claim 1 recites a specific product, a claim for the method of making the product of claim 1 in a particular manner would be a proper dependent claim since it could not be infringed

without infringing claim 1. Similarly, if claim 1 recites a method of making a product, a claim for a product made by the method of claim 1 could be a proper dependent claim.

4.2 Claims 1 to 9, 17-18, and 22-24

2 – 1 in parte Bilski

The USPTO has posted the following 2006 decision (later appealed to CAFC)

`http://www.uspto.gov/web/offices/dcom/bpai/its/fd022257.pdf`

Claims 1 to 9, 17, 22 and 24 in the Amendment are claims that contain technical implementations using technical means of the type the USPTO has accepted. In the Bilski case, the USPTO objected to the absence of technical means.

4.3 Claim to a portfolio or financial product, 18-21

A portfolio is claimed as a manufacture. Portfolios are recognized in the law. Portfolios are recognized in securities law, contract law, estate law, etc. A portfolio does not occur in nature but is made by man. Thus a portfolio is

statutory subject matter.

A financial product is claimed as a manufacture. The financial services industry has chosen this term precisely to reflects its view that it manufactures them.

3 – 1 Diamond v. Chakrabarty

> The Committee Reports accompanying the 1952 Act inform us that Congress intended statutory subject matter to "include anything under the sun that is made by man." S. Rep. No. 1979, 82d Cong., 2d Sess., 5 (1952); H. R. Rep. No. 1923, 82d Cong., 2d Sess., 6 (1952). 6
>
> This is not to suggest that 101 has no limits or that it embraces every discovery. The laws of nature, physical phenomena, and abstract ideas have been held not patentable.

A portfolio is not any of the excluded categories: "The laws of nature, physical phenomena, and abstract ideas."

A portfolio is made by man. So is a financial product.

3 – 2 In re Petrus Nuijten (CAFC 2006-1371)

CAFC decision.

http://www.cafc.uscourts.gov/opinions/06-1371.pdf

The conclusion of the majority on page 19 of the pdf, numbered page 18 of the opinion indicates that the conclusion is limited only to a transitory signal.

> III. Conclusion
>
> "A transitory, propagating signal like Nuijten's is not a "process, machine, manufacture, or composition of matter." Those four categories define the explicit scope and readh of subject matter patentable under 35 U.S.C. Section 101; thus, such a signal cannot be patentable subject matter.

A portfolio is not transitory. Nor is a financial product. Thus the basis of denying the manufacture claim in Nuijten does not apply to a portfolio or financial product. The rest of the opinion including the dissent of Linn

shows that a portfolio is a manufacture. So is a financial product. The very words financial product show the industry claims them as a manufacture.

Chapter 5

Closing

Respectfully submitted,

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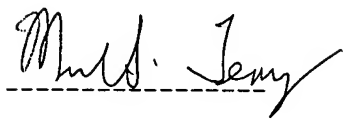

703-799-0518

Attachments